

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPP

MICHAEL J. SULLIVAN  
DIRECTOR

August 9, 1995  
AO-95-26

Martin David Conner  
Marty's Computer Workshop  
P.O. Box 550  
Cambridge, MA 02142-0004

Re: Consultant/Independent Contractor

Dear Mr. Conner:

This letter is in response to your July 20, 1995 request for an advisory opinion regarding the application of section 13 of M.G.L. c. 55, the campaign finance law, to you in your capacity as a consultant to the Commonwealth's Executive Office of Education.

You have stated that you are a candidate for city council in Cambridge. In addition, you state that you own and operate Marty's Computer Workshop which provides computer consultant services. One of your clients is the Executive Office of Education ("EOE"). You have discussed this matter with EOE and have been informed by its business manager that you are considered an independent contractor. You further state in your letter that you are a sole proprietor and set your own hours. EOE is one of many clients with whom you contract. In addition, you have no office at EOE, come in to meet with EOE officials on an "as needed" basis, bill EOE on an hourly basis for your services and are paid by EOE as an independent contractor. Based upon conversations you have had with OCPF's General Counsel, I also understand that you are not supervised by anyone at EOE and do not receive any employee benefits such as health care or retirement benefits.<sup>1</sup> You have asked if section 13 of the campaign finance law prohibits your solicitation and receipt of contributions for your city council candidacy.

For the reasons set forth below it is the opinion of this office that you are an independent contractor and not a person "employed for compensation" by the Commonwealth for purposes of section 13. Therefore, you may solicit contributions, directly or indirectly, for your campaign for the Cambridge City Council or for any other political purposes.

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<sup>1</sup> For the purpose of this opinion, I also assume that you are not otherwise employed by the commonwealth or any county, city, town, public authority, board or commission.

In relevant part, section 13 provides:

No person **employed for compensation**, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . . (Emphasis added.)

Section 13 applies only to appointed persons "employed" by the commonwealth or one of its subdivisions. Section 13 does not apply, however, to independent contractors. See AO-93-24 (fire fighter is not an independent contractor even though he sets his own hours because he is subject to supervision and control). Compare AO-91-03 (attorney providing services to a town which contracted with attorney's professional corporation was not "employed for compensation") and AO-88-19 (attorney providing services to various government agencies, including the Attorney General's Office, who did not report to any state officer and made all decisions regarding litigation was an independent contractor). Therefore, the threshold question is whether you are an employee of the Commonwealth or an independent contractor.<sup>2</sup>

In your capacity as the sole proprietor of Marty's Computer Workshop, you have entered into a contractual agreement with EOE as you have with many other clients to provide guidance and advice in connection with certain computer needs identified by EOE. As noted, you set your own hours, bill for your services, have no office at EOE and receive no employee benefits. Most importantly, your work is not supervised nor is your opinion or advice controlled by EOE. Therefore, it is the opinion of this office that you are an independent contractor and not an employee of EOE.

Although you did not specifically ask whether you are subject to the provisions of M.G.L. c. 55, s. 15 as a person in the public service, I further conclude that you are not.

Section 15 of M.G.L. c.55 states:

No officer, clerk or other **person in the service of the commonwealth or of any county, city or town** shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to

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<sup>2</sup> Regardless of whether a person is designated or paid as an independent consultant or even by a business or non-profit corporation, that person may be considered as a person "employed for compensation" by the commonwealth for purposes of section 13 depending upon the arrangement between the commonwealth and the individual. See AO-84-09.

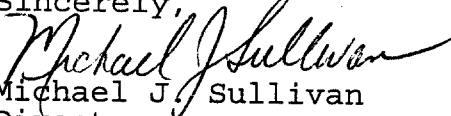
any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.

Whether your fundraising activity is limited by section 15 turns on the meaning of "persons in the service." This office has previously advised that the phrase "was intended to include any elected, appointed or other person, regardless of compensation, who is providing significant public services to the commonwealth or one of its subdivisions or authorities." See AO-92-01. The office has stated that "the fact of official appointment or election to an office is an important, if not essential, criterion in determining whether someone is a 'person in the service' for purposes of section 15." Id. An independent contractor is not "appointed." Therefore, an independent contractor is not subject to the provisions of section 15 merely because he has a contract with the commonwealth or one of its subdivisions.

This opinion has been rendered solely on the basis of representations made in your letter and conversation with office staff as set forth in this opinion and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

  
Michael J. Sullivan  
Director

MJS/cp